



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Mr. Larry F. York
Baker & Botts, L.L.P.
1600 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4039

OR95-951

Dear Mr. York:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34158.

The Travis County Sheriff's Office (the "county") received an open records request for copies of all documents pertaining in any way to the internal affairs investigation of Sheriff Keel, including but not limited to the investigation conducted by two specific individuals and the final result of any such investigation. You inform us that there is a pending lawsuit filed against the sheriff, styled *Byington v. Keel*. You contend that several chapter 552 exceptions apply. Among them you contend that, since the requested information is related to the pending litigation, section 552.103(a) of the Government Code excepts the requested information from required public disclosure. You have enclosed for our review copies of the documents you contend relate to the request and a copy of the plaintiff's petition in the lawsuit.

The plaintiff, by her petition in *Byington v. Keel*, alleges that the sheriff and two of his deputies violated her civil rights by causing her office and car to be searched, pursuant to a warrant, for a map of the whereabouts of a particular kidnapped child. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that most of the submitted documents relate to the pending *Byington* litigation for purposes of section 552.103(a).

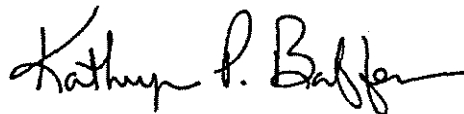
In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We have marked one of the documents submitted for our review. Regarding this document, we conclude that you have failed to demonstrate how it relates to the pending *Byington* litigation. In reviewing this document, we note that it contains information that is protected by common-law privacy and is excepted from required public disclosure pursuant to section 552.101 of the Government Code. See *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The marked information located in the marked document must be withheld from disclosure. The unmarked portions of this marked document, however, must be released to the requestor.

In conclusion, you may withhold the information contained in the unmarked documents submitted for our review pursuant to section 552.103(a). Additionally, regarding the marked document, you must withhold only the marked portions of these documents and release the remaining portions of this marked document to the requestor.

Though you have asserted that sections 552.107 and 552.108 except the submitted documents from required disclosure, you have made no argument showing the applicability of these two exceptions. Consequently, we do not address these exceptions. See Open Records Decision No. 542 (1990). We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

Ref: ID# 34158

Enclosures: Marked documents

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(w/o enclosures)